

## REMARKS/ARGUMENTS

The Office communication mailed December 4, 2007 has been received. In the communication, the Examiner contends that a reply filed on June 2, 2005, was not responsive because Claims 41-61 were not labeled as “Withdrawn.” Applicant notes that there was no reply filed in the instant application on or about June 2, 2005. Inasmuch as the Examiner is referring to the Response to Restriction Requirement (hereinafter the “Reply”) filed by the Applicant on August 13, 2007, Applicant disagrees with the contention that the Reply was non-responsive.

According to 37 CFR § 1.121, “In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).” (emphasis added). In the Reply, the Applicants provisionally elected Group I **with traverse**. As such, Applicants did not voluntarily withdraw any claims, and the correct status for claims 41-59 and 61 at the time of filing the Reply was not “Withdrawn,” but “Original” or “Previously presented,” as appropriate. See also 37 CFR §1.142(b): “Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election.” (emphasis added). Also see 37 CFR § 1.143:

If the applicant disagrees with the requirement for restriction, he may request reconsideration and withdrawal or modification of the requirement, giving the reasons therefor. (See § 1.111). In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final, the examiner will at the same time act on the claims to the invention elected. (emphasis added).

Applicants submit that the Reply was fully responsive because none of Claims 41-59 and 61 were withdrawn by Applicant. Applicant further submits that the restriction of Claims 41-59 and 61 is improper, and the arguments presented in the Reply are reproduced hereinbelow for the convenience of the Examiner.

The claims of **Group I (Claims 1, 2, 4-19, and 24)** are provisionally elected with traverse. The Applicant traverses the requirement as failing to satisfy the requirements for maintaining such a restriction requirement. In particular, the Applicant submits that nowhere in the Office Action has the Examiner presented evidence that inventions of Groups I, II and IV are distinct from each other. In paragraph 2 of the Office Action, the Examiner contends that the claims of asserted Groups I/II and III are distinct, and in paragraph 3 of the Office Action, the Examiner contends that the claims of asserted Groups I/II/IV and III are distinct. Thus the Applicant submits that the Examiner has not provided any reasons that Groups I, II, and IV require restriction under 35 U.S.C. 121, and submits that Applicant should further be able to provisionally elect Groups II and IV (Claims 41-48 and 61) with traverse. Regarding the stated reasons for restriction of Group III, the Applicant requests reconsideration and withdrawal of the restriction requirement.

#### Restriction Based Upon Related Processes

The Examiner contends that the claims of asserted Groups I/II and III are directed to related processes, which is governed by MPEP §806.05(j). All three of the requirements of M.P.E.P. § 806.05(j) must be shown, including 1) the inventions are not capable of use together or can have a materially different design, mode of operation, etc.; 2) the inventions do not overlap in scope, *i.e.*, are mutually exclusive; **and** 3) the inventions are not obvious variants. In Office Action paragraph 2, the Examiner states that “the inventions as claimed do not each recite similar features, e.g., coupling a plurality of bridge modules, nor a collective charging event. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.” Applicants first note that, all three of the requirements under M.P.E.P. § 806.05(j) must be established, and the burden is on the examiner to provide an example to support the determination that the inventions are distinct. For the requirement that the “the inventions are not capable of use together or can have a materially different design, mode of operation,” the Examiner has provided no evidence that the inventions are not capable of use together, Nor has the Examiner alleged that the purported differences in the inventions result in a materially different design, mode of operation, etc.

For the requirement that the “inventions do not overlap in scope,” the only rationale provided in the Office Action for each of the alleged inventions is “the inventions as claimed do not encompass overlapping subject matter...” It is respectfully submitted that this is a conclusory statement, and merely recites the requirement, rather than providing any example to support the determination that the claim groups do not overlap in scope or are mutually exclusive.

In addition to the Applicant’s contention that the requirements of M.P.E.P. § 806.05(j) have not been properly established, the Applicant respectfully submits that the claim groups are not devoid of any overlap in scope, and are not mutually exclusive. For example, claims in each group relate to the receiving of charging events at one or more bridge modules logically coupled between network elements and charging elements. It is respectfully submitted that this at least establishes that the claim groups are not devoid of any overlap in scope. Thus it is respectfully submitted that the claim groups do not require restriction/election under M.P.E.P. § 806.05(j).

#### Restriction Based Upon Process and Apparatus for its Practice

The Examiner contends that the claims of asserted Groups I/II/IV and III are related as process and apparatus for its practice, which is governed by MPEP §806.05(e). This portion of the MPEP states that restriction is proper if the Examiner can establish that either (1) the process *as claimed* can be practiced by another materially different apparatus or by hand or (2) the apparatus *as claimed* can be used to practice another materially different process (emphasis in original). MPEP §806.05(e) also states that the burden is on the Examiner to provide reasonable examples that recite material differences (emphasis added). The Examiner has not established either of these requirements and has not fulfilled his burden in the asserted restriction.

The Examiner asserts in paragraph 3 of the Office Action that “the apparatus may be used as a point of sale apparatus for monitoring inventory.” However, Applicant submits that no evidence has been presented that the invention as claimed could reasonably be used “as a point of sale apparatus for monitoring inventory,” nor that such use is a materially different process than the limitations of the claims of Groups I/II/IV. As such, the Applicant

respectfully asserts that the Examiner has not satisfied the requirements for restriction with respect to the claims of asserted Groups I/II/IV and III, and Applicant accordingly requests that the requirement for restriction be withdrawn.

#### Burden on the Examiner

The question also remains as to whether a serious burden would be placed on the Examiner if all claim groups were to be examined together. In order to establish reasons for insisting upon restriction, the Examiner must explain why there will be a serious burden on the examiner if restriction is not required. M.P.E.P. § 808.02. The M.P.E.P. requires that the Examiner establish the serious burden by appropriate explanation of one of the following: (A) separate classification; (B) separate status in the art when they are classifiable together; or (C) a different field of search. M.P.E.P. § 808.02. Further, M.P.E.P. § 803 indicates that if a search and examination of all the claims can be made without serious burden, the examiner must examine them on the merits.

A serious burden may be established by the examiner's appropriate explanation of a different field of search. According to M.P.E.P. § 808.02, this may occur where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s). It is respectfully submitted that there has been no such explanation of a different field of search where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other inventions. On the contrary, the Applicant submits the Office Action mailed 12/12/2006, (where Claims 1, 2, and 4-61 were rejected based on the same reference) as evidence that search and examination of the purported groups can be made without serious burden on the Examiner. For at least this reason, the Applicant respectfully submits that it would not impose a serious burden on the Examiner to examine all of the cited claim groups together.

Conclusion

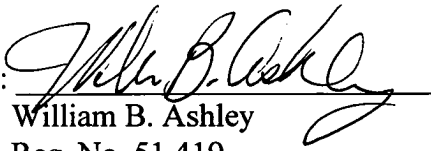
In view of the above, Applicant respectfully requests reconsideration and withdrawal of the requirement for restriction. If the Examiner would find it helpful to discuss this issue by telephone, the undersigned attorney of record invites the Examiner to contact the attorney of record.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC  
8009 34<sup>th</sup> Avenue South, Suite 125  
Minneapolis, MN 55425  
952.854.2700

Date: December 18, 2007

By:

  
William B. Ashley  
Reg. No. 51,419